

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2769 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? NO

2. To be referred to the Reporter or not? NO

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3. Whether Their Lordships wish to see the fair copy
of the judgement? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge?
NO

KANTILAL & CO.

Versus

DIST. DEVELOPMENT OFFICER
AND ANOTHER.

Appearance:

MR PC MASTER for Petitioner
SERVED for Respondent No. 1
MS P.S.PARMAR ADDL.GOVERNMENT PLEADER
for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT
Date of decision: 05/11/96

ORAL JUDGEMENT

The petitioner, by this application, calls in
question the legality and propriety of the order dt. 20th
May 1985 passed by the District Development Officer,

Baroda renewing the N.A.Permission on certain terms and conditions and also imposing the penalty of Rs.3,248/-.

2. Mr. Ranjitsinh S. Ataliya was having the agricultural land bearing Survey No. 874 situated within the sim of village Karajan. The petitioner forming Co-operative Housing Society wanted to construct dwelling Units for the members of the society. He, therefore, purchased the said land and sought the permission for non agricultural use, ordinary known as N.A.Permission. Initially on 26th March, 1982, the N.A.permission was granted on certain terms and conditions, one of which was to start construction within six months of the permission and complete the construction work within three years from the date of the permission. It was also made clear that in case of breach of the condition, the permission granted would be cancelled and the petitioner would have to pay additional cess. During the period specified the petitioner could not start the construction of the dwelling units, because Town Planning Scheme was brought into force and under that scheme, he was required to take necessary permission. He had applied for the permission but the same was not granted. By the time, the period of three years was to expire, and therefore, on 21st February 1985, the petitioner again applied for the renewal of the N.A.Permission for a further period. The District Development Officer extended the period of N.A.Permission by one year imposing the fine of Rs.3,248/-, because the condition under which the construction was to be completed, was violated. The petitioner was not satisfied with the said order passed by the District Development Officer. He has, therefore, preferred this petition challenging the legality and propriety of that order.

3. While renewing the permission for a further period of one year, the fine of Rs.3,248/- is imposed which is challenged on the ground that before passing the impugned order, opportunity of being heard was not given. It is the cardinal principle of law that before any order is passed effecting right, title and interest of the person, or the order is sought against the person, he should be afforded the opportunity of being heard, and if without affording that opportunity, the order is passed, it would amount to condemning the party unheard and whatever order in that case is passed, will be void in law and will have to be quashed. There is nothing on record going to show that before passing the impugned order, the District Development Officer at Baroda had given the opportunity to submit in the matter. In his order also, nothing has been mentioned about the

opportunity having been given to the present petitioner. It seems perusing papers before him, the District Development Officer passed the order imposing the fine. When without affording any opportunity to submit to the petitioner the order is passed, the same being void is required to be quashed.

4. Even on another count also, the order cannot be maintained. The fine is imposed, if a wrong is done in the eye of law but; if the wrong is rectified or condoned, the wrong does not survive and consequently the cause to impose the fine also would not survive. The District Development Officer, while considering the application for renewing the permission, considered several factors inclusive of violation of the condition, which he could note from the papers before him. He was, therefore, aware about the breach of the conditions having been committed by the petitioner. Still however, he preferred to renew the permission for a further period of one year and that amounts to condonation of the wrong done or rectifying the wrong done. When that is so, the order of imposing fine is unjust.

5. While imposing fine, the authority has to consider whether the condition imposed was violated or set at naught, because of the circumstance beyond the control of the party, or by discarding the same deliberately or because of any other reason. In this case, the petitioner, after obtaining the permission initially in March 1982, was sincere in carrying out the construction in accordance with the plans he had in his mind for which the permission was sought for. But he had also to obtain necessary permission from the Development Town Planning Officer as the scheme under the Town Planning Act had already come into force. Unless that permission was granted, it was not at all possible for him to construct the dwelling Units. Today, the permission given by the Town Planning Officer, is shown to me, the copy of which is also being tendered and placed on record, which shows that only on 18th July 1996, the Town Planning Officer granted the permission to construct the dwelling Units under the Town Planning Act. The petitioner was, therefore, not in a position to construct upto 18th July 1996. This circumstance was, therefore beyond his control which the District Development Officer ought to have borne in mind. In this case, the petitioner could not comply with the conditions and terms imposed while granting the permission, because of such circumstance beyond his control. When that is so, it was unjust to impose the fine.

6. Mr. P.C.Master, learned advocate for the petitioner submits that the whole of the order must be quashed because the permission was extended for one year only and now he will have to go again to the District Development Officer for seeking the permission and if that is not given, he will have again to file another petition before this court for redressal of his grievance. He also referred to the decision of this court rendered in the case of Karimbhai Kalubhai Belim and others vs State of Gujarat and Another, 1996(1) G.L.H. 200 which lays down that if under Sec.29 of the Gujarat Town Planning and Urban Development Act, when development Permission is granted, as per provisions of Sec.117, it is not required to obtain any other permission under any other law including N.A. permission under Sec.65 of the Bombay Land Revenue Code. Again in another decision rendered in the case of Motibhai Somaji & Others vs State of Gujarat & Anr. 37(2) G.L.R. 286, likewise view is taken. In view of these decisions, the answer to the issue raised is available and so the petitioner has to take his own decision. In view of the decisions of this court, no opinion is required to be expressed on the point.

7. In the above set of circumstances, not whole of the order but order imposing fine is required to be quashed and set aside. The petition is, therefore, partly allowed. The order passed by the District Development Officer, Baroda on 20th May 1985, copy of which is produced at Annexure B, and the order passed by the Secretary (Revenue) in revision on 15th January 1996, copy of which is produced at Annexure D, are hereby quashed and set aside, so far as the same relates to imposition of fine of Rs.3,248/-. Fine, if any, is levied, the same be refunded to the petitioner. No order as to costs in the circumstances of the case. Rule is made absolute to the aforesaid extent.
